



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

BJG
Docket No: 7354-02
26 August 2002

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: 1STLT [REDACTED] USMC [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 13 Mar 02 w/attachments
(2) HQMC MMER memo dtd 13 Aug 02 w/encl
(3) HQMC MMOA-4 memo dtd 9 Aug 02
(4) Subject's naval record

1. Pursuant to reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected by removing five fitness reports, those for 2 May to 31 July 2000, 1 August to 11 December 2000, 12 December 2000 to 2 May 2001, 3 to 31 May 2001, and 1 June to 30 November 2001, copies of which are in enclosure (1) at Tabs A through E, respectively. As indicated in enclosure (2), the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) has directed removing the contested fitness reports. Petitioner further requested removing his failure of selection by the Fiscal Year 2003 Captain Selection Board, so as to be considered by the selection board that next convenes to consider officers of his category for promotion to captain as an officer who has not failed of selection to that grade.

2. The Board, consisting of Messrs. Agresti, McBride and Shy, reviewed Petitioner's allegations of error and injustice on 21 August 2002, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. In correspondence attached as enclosure (3), the HQMC office having cognizance over the subject matter of Petitioner's request to strike his failure of selection for promotion has commented to the effect that this request has merit and warrants favorable action.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (3), the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's record be corrected so that he will be considered by the earliest possible selection board convened to consider officers of his category for promotion to captain as an officer who has not failed of selection for promotion to that grade.

b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


JONATHAN S. RUSKIN
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


W. DEAN PFENNER
Executive Director



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

7354-02

IN REPLY REFER TO:
1610
MMER
13 Aug 02

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF FIRST LIEUTENANT
[REDACTED] USMCR

Encl: (1) Copy of CMC ltr 1610 MMER/PERB of 27 Jun 02
(2) CMC Advisory Opinion 1610 MMOA-4 of 9 Aug 02
(3) Copy of CMC ltr 1610 MMER/PERB of 13 Aug 02

1. As evidenced by enclosure (1), PERB removed from 1stLt [REDACTED] official military record, the fitness reports for the periods 000502 to 000731 (SA), 000801 to 001211 (GC), 001212 to 010502 (CH), 010503 to 010531 (SA), and 010601 to 011130 (SA).

2. We defer to BCNR on the issue of [REDACTED] request for the removal of his failure of selection to the grade of Captain. Enclosure (2) is furnished to assist in resolving that matter.

3. By enclosure (3), this Headquarters provided [REDACTED] with a copy of the Advisory Opinion contained at enclosure (2).

[REDACTED]

Head, Performance Evaluation
Review Branch
Personnel Management Division
By direction of the Commandant
of the Marine Corps

1610
MMER/PERB
JUN 27 2002

From: Commandant of the Marine Corps
To: First Lt [REDACTED] MCR

Subj: CORRECTION OF NAVAL RECORD

Ref: (a) MCO 1610.11C

1. Per the reference, the Performance Evaluation Review Board has reviewed allegations of error and injustice in your naval record. Having reviewed all the facts of record, the Board has directed that your naval record will be corrected by removing therefrom the following fitness reports:

<u>Date of Report</u>	<u>Reporting Senior</u>	<u>Period of Report</u>
7 Jan 02	Cap [REDACTED]	000502 to 000731 (SA)
7 Jan 02	[REDACTED]	000801 to 001211 (GC)
7 Jan 02	[REDACTED]	001212 to 010502 (CH)
6 Dec 01	[REDACTED]	010503 to 010531 (SA)
17 Dec 01	[REDACTED]	010601 to 011130 (SA)

2. There will be inserted in your naval record a memorandum in place of the removed reports. The memorandum will contain appropriate identifying data concerning the reports and state that they have been removed by direction of the Commandant of the Marine Corps and cannot be made available in any form to selection boards and reviewing authorities. It will also state that such boards may not conjecture or draw any inference as to the nature of the reports or the events which may have precipitated them, unless such events are otherwise properly a part of the official record. The PES (the data base which generates your Master Brief Sheet) will be corrected accordingly.

[REDACTED]
By direction



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

7354-02

IN REPLY REFER TO:

1600
MMAA-4
09 Aug 02

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR PETITION FOR FIRST LIEUTENANT [REDACTED]
[REDACTED] SVGR

Ref: (a) MMER Request for Advisory Opinion in the case of
[REDACTED]

1. Recommend approval of First Lieutenant [REDACTED] request for
removal of his failure of selection.

2. Per the reference, we reviewed First Lieutenant [REDACTED] record
and petition. First Lieutenant [REDACTED] failed selection on the FY03
USMC Captain Selection Board. He successfully petitioned the
Performance Evaluation Review Board to remove the following reports:

SA 000502 - 000731
GC 000801 - 001211
CH 001212 - 010502
SA 010503 - 010531
SA 010601 - 011130

3. In our opinion, the removed reports contained competitive
concerns that may have contributed to his failure of selection.
Removal of these reports significantly changes First Lieutenant
[REDACTED] record, and may increase its competitiveness.
Therefore, we recommend approval of his request for removal of
his failure of selection.

5. POC [REDACTED]

[REDACTED]
Lieutenant Colonel, USMC
Head, Officer Counseling and
Evaluation Section
Personnel Management Division